

THEMATIC REPORTS

Mechanisms of the Commission on Human Rights

Arbitrary detention, Working Group on:

(E/CN.4/1998/44, paras. 6, 14, 16, 19, 21, Annex III; E/CN.4/1998/44/Add.1, Decision No. 44/1996)

The main report notes that two urgent appeals, involving 13 persons, were sent to the government. No details of the cases were provided. Annex III of the report contains Opinions adopted by the Working Group (WG) at its November/December 1997 session.

With regard to Decision 26/1994, adopted in September 1994, the report notes that the government requested a review of the WG's decision that deprivation of liberty had been arbitrary. The case involved four Dominican citizens arrested in Colombia in October 1992. The WG based its decision on grounds that the rules of due process of law had been violated, in that: much of the evidence presented was secret, as were the judge and the prosecutor; no appropriate action was taken to compensate for not holding proceedings in public, so as to ensure the impartiality and independence of judges; the accused were denied the right to a public hearing; the accused were also denied adequate time and facilities to prepare their defence; and, the accused were denied the opportunity to examine or have examined the witnesses against them, since the identity of the latter was also kept secret. In February 1997 the government requested a review of the decision on the basis that the criminal investigation undertaken had led to the clear conclusion that the four individuals had never been unlawfully deprived of their liberty and that at all times their detention had been in conformity with an order by a competent authority. On this basis, the government stated that any notion of arbitrary detention was invalid. The WG recalled that, under its methods of work, any request for a review of an opinion must be based on entirely new facts not known to the Group at the time it adopted its decision or opinion, and of such a nature as to have caused the Group to alter its decision had it been aware of them. The report notes that the government's request for a review did not allege any new fact. In light of the absence of any new elements, the WG rejected the request for reconsideration.

Decision No. 44/1996 related to the cases of five persons who were released. On this basis and without pre-judging the nature of the detentions, the WG decided to file the cases.

Disappearances, Working Group on enforced or involuntary: (E/CN.4/1998/43, paras. 3, 8, 13, 135-147)

The report notes that the Working Group (WG) transmitted 36 new cases to the government, 16 of which reportedly occurred in 1997. Fifteen were transmitted under the urgent action procedure. Six previous cases were clarified on the basis of information provided by the government.

The report notes that the majority of the 1,006 reported cases of disappearances in Colombia have occurred since 1981 and involve members of civic or human rights groups who had publicly denounced abuses by members of the security forces or paramilitary groups. The newly reported cases transmitted in 1997 occurred mainly in rural areas. Most of the detentions leading to disappearances were carried out by members of paramilitary groups believed to be acting with the complicity or the passivity of the security forces, very often in areas of heavy military presence. In a few cases the sources pointed to the army as the force responsible for the arrest.

The WG called the government's attention to the harassment of the family of a missing person, reportedly in connection with their intervention in the penal proceedings against members of the police allegedly involved in the case. Concern was also conveyed to the government following reports that, in June 1997, a bomb exploded in the building where the Association of Relatives of Disappeared Detainees in Medellín has its offices.

The report recalls that, in the past, the WG had made recommendations to the government concerning the right of missing persons and their families to an effective remedy, and that information received from non-governmental organizations during 1997 indicates that the judicial investigations to locate the missing persons and punish those responsible almost never succeed. The WG stated that, with regard to human rights cases, the justice system has not achieved major improvements since 1988, with the possible exception of the investigation into the disappearance of 19 traders in 1987 which concluded that the victims had disappeared after being arrested at a military checkpoint. Three civilians who had acted in conjunction with members of the armed forces were sentenced to 90 years' imprisonment, but no members of the armed forces were punished by the military courts for the same facts.

With regard to the new bill on enforced disappearance presented to the Congress in November 1997, the WG recommended to the government that steps be taken to ensure that the final text fully complies with the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance. Information was also received about an August 1997 decision of the Constitutional Court which states, *inter alia*, that certain crimes do not constitute service-related acts and therefore should not fall under military jurisdiction, for example, crimes against humanity, and that in such circumstances the cases should be assigned to the ordinary courts. The report notes the concerns of non-governmental sources that, since the ruling by the Constitutional Court, the government had not made the necessary arrangements to refer cases currently under the military criminal justice system to the ordinary justice system when they do not fulfil the conditions for a hearing in the military courts.